

**HEALTH**

**PUBLIC HEALTH SERVICES BRANCH**

**DIVISION OF PUBLIC HEALTH INFRASTRUCTURE, LABORATORIES, AND**

**EMERGENCY PREPAREDNESS**

**OFFICE OF LOCAL PUBLIC HEALTH**

**Public Health Practice Standards of Performance for Local Boards of Health in  
New Jersey**

**Nuisances**

**Proposed Amendment: N.J.A.C. 8:52 Appendix**

Authority: N.J.S.A. 26:1A-15 and 26:3A2-1 et seq., and Reorganization Plan No. 003-2005.

Authorized By: Mary E. O'Dowd, Commissioner, Department of Health, in consultation with the Public Health Council.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-104.

Submit written comments by October 16, 2015, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml>, or by regular mail to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

### **Summary**

The Department of Health (Department) is developing a rulemaking that would revise and reorganize existing N.J.A.C. 8:52, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. To maintain the effectiveness of the existing chapter until the Department can finalize the anticipated rulemaking, the Department readopted N.J.A.C. 8:52 by means of a notice of readoption that appears elsewhere in this issue of the New Jersey Register.

The New Jersey Superior Court, Appellate Division, has determined that provisions of existing N.J.A.C. 8:52 Appendix are unconstitutional, as described below.

Existing N.J.A.C. 8:52-3.3, Local health agency's minimum capacity, requires, in relevant part:

(a) Each local health agency shall, at a minimum, have the capacity to deliver:

1. Basic public health services set forth in "Public Health Practice Standards of Performance for Local Boards of Health, N.J.A.C. 8:52-1 et seq., Programmatic Guidelines for Best Practices," which is attached here as Appendix incorporated herein by reference...

Existing N.J.A.C. 8:52 Appendix at Part I, Environmental Health Activities at paragraph (a)1 of the Public Health Nuisances section, requires that a "local board of health shall conduct a public health nuisance program to include ... [investigations] of

public health nuisances including, but not limited to, noxious weeds, housing, solid waste and insect and rodents, which shall be conducted in accordance with applicable State laws and local ordinances, which are at least equivalent to ... the 'Public Health Nuisance Code of New Jersey' (which [is a] model code[] available from the Department of Health ...) ...”

The Public Health Nuisance Code of New Jersey (1953) (approved September 16, 1953, by the Department of Health) (on file at the New Jersey State Library; copy available upon request to the Department) provides in part, at Section II, Nuisances Defined and Prohibited:

2.1 The following matters, things, conditions or acts and each of them are hereby declared to be a nuisance and injurious to the health of the inhabitants of this municipality:

(a) Any matter, thing, condition or act which is or may become detrimental or a menace to the health of the inhabitants of this municipality.

(b) Any matter, thing, condition or act which is or may become an annoyance, or interfere with the comfort of general well-being of the inhabitants of this municipality.

In *Guidi v. City of Atlantic City*, 286 N.J. Super. 143 (App. Div. 1996), and again in *State v. Golin*, 363 N.J. Super. 474 (App. Div. 2003), the New Jersey Superior Court,

Appellate Division, determined the above provisions of the Public Health Nuisance Code (1953) to be vague, overbroad, unconstitutional, and, therefore, unenforceable.

In response to a petition for rulemaking, the Department agreed that rulemaking to remove the unconstitutional standard was appropriate and necessary. (See 40 N.J.R. 4245(a), 41 N.J.R. 317(a), and 44 N.J.R. 1920(a)) To guide local health agencies pending the finalization of the required rulemaking, the Office of Local Public Health of the Department issued an “Administrative Advisory” to local health agencies on June 20, 2012. This Administrative Advisory advised local health agencies to “review their ordinances to ensure that they are consistent with [*Golin and Guidi, supra*,] and no longer rely on and use sections 2.1 (a) and (b) of the [Public Health Nuisance Code (1953)].” <http://www.state.nj.us/health/lh/aa.shtml>.

The Department proposes to exclude the unconstitutional provisions, specifically Section II, Nuisances Defined and Prohibited, at sections 2.1(a) and (b) from the incorporation by reference of the model code in N.J.A.C. 8:52 Appendix.

The Department proposes a technical amendment to correct the name of the Department in the affected section, pursuant to P.L. 2012, c. 17 (N.J.S.A. 26:1A-2.1).

Because the Department provides a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement at N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendment would ensure that the Department is not requiring local governments to establish local ordinances that impose unconstitutional standards and would alert local governments to the need to repeal existing local ordinances that

track or implement the unconstitutional standard. In turn, this would ensure that local public health agencies do not expend resources or incur liability attendant to the enforcement of the unconstitutional standard.

### **Economic Impact**

The proposed amendment would have no economic impact on the Department. Local governments that endeavor to repeal existing local ordinances that track or implement the unconstitutional standard may incur costs associated with the professional services needed to draft necessary repeal documentation for consideration and action by their governing bodies. In turn, this would enable local public health agencies to avoid liability and the expenditure of resources associated with enforcement of the unconstitutional standard.

### **Federal Standards Statement**

A Federal standards analysis is required because the Department is not proposing the amendment under the authority of or to implement, comply with, or participate in, any program established under Federal Law or any State statute that incorporates or refers to any Federal law, standard, or requirement.

### **Jobs Impact**

The Department does not anticipate that the proposed amendment would have an impact on the creation or loss of jobs in the State.

### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendment would have an impact on the State agriculture industry.

### **Regulatory Flexibility Statement**

The proposed amendment would exclude an unconstitutional standard applicable only to local health agencies and would not establish standards or requirements applicable to small businesses as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term. Therefore, a regulatory flexibility analysis is not required.

### **Housing Affordability Impact Analysis**

The proposed amendment would have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that it would evoke a change in the average costs associated with housing because the proposed amendment would exclude an unconstitutional standard applicable only to local health agencies.

### **Smart Growth Development Impact Analysis**

The proposed amendment would have an insignificant impact on smart growth and there is an extreme unlikelihood that it would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment would exclude an unconstitutional standard applicable only to local health agencies.

**Full text** of the proposal follows (additions indicated in italics *thus*; deletions indicated in brackets [thus]):

**(Agency Note:** The text of N.J.A.C. 8:52 Appendix follows with those portions appearing in boldface intended to be so permanently.)

### **APPENDIX**

#### **PROGRAMMATIC GUIDELINES FOR BEST PRACTICES**

## **I. Environmental Health Activities**

...

### **Public health nuisances**

(a) The local board of health shall conduct a public health nuisance program to include the following:

1. Investigations of public health nuisances including, but not limited to, noxious weeds, housing, solid waste, and insect and rodents, which shall be conducted in accordance with applicable State laws and local ordinances, which are at least equivalent to the "Weed Control Code of New Jersey," the "Solid Waste Code of New Jersey," and the "Public Health Nuisance Code of New Jersey (1953)," *exclusive of Section 2.1 (a) and (b)* (which are model codes available from the Department of Health [and Senior Services]);

2. - 4. (No change.)

...